

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 423 of 1996

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SPECIAL CIVIL APPLICATION NO. 3066 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Spl. C.A. No. 423 of 1996

INDIAN FARMERS FERTILIZER CO-OPERATIVE LTD

Versus

STATE OF GUJARAT

Spl. C.A. No. 3066 of 1996

GUJARAT MAZDOOR SABHA

Versus

State of Gujarat & Anr.

Appearance In Spl. C.A. No. 423 of 1996:

MR SM SINGHI for Petitioner

MR DA BAMBHANIA for Respondent No. 1

SERVED BY DS for Respondent No. 2

MR NR SHAHANI & Mr. Mukul Sinh for Respondent No. 4

MR BV LAKHIA for Respondent No. 5

Appearance in Spl. C.A. No. 3066 of 1996

Mr. Mukul Sinh for petitioner

Mr. DA Bambhanian for Respondent No.1

Mr. S.B. Vakil with Mr. M.B. Bhuch for Respondent
No.2

CORAM : MR.JUSTICE S.D.SHAH
Date of decision: 01/07/96

ORAL COMMON JUDGEMENT

1. Rule. In Spl. C.A. No. 423 of 1996 Mr. D.A. Bambhanian waives service of Rule for Res.No. 2, Mr. N.R. Sahani and Mr. Mukul Singh waive service of Rule for Res. No.4, Mr. B.V. Lakhia waives service of Rule for Respondent No.5 respectively. In Spl. Civil Application No. 3066 of 1996, Mr. D.A.Bambhanian waives service of rule for State Government and Mr. S.B. Vakil waives service of Rule for Respondent No.2. With the consent of the learned advocates appearing for the parties, these two matters are finally heard and decided today by this common judgment.

2. The petitioner in first petition is Indian Farmers Fertilizer Cooperative Ltd (IFFCO), Kalol and in the second petition Gujarat Mazdoor Sabha is the petitioner who represents the labour force of IFFCO.

3. IFFCO is aggrieved by the impugned Notification dated 27th December, 1995 abolishing contract labour system in certain activities of the petitioner establishment. Such notification is issued by the Government of Gujarat Labour and Employment Department in exercise of the powers conferred by the provisions of the Contract Labour (Regulations & Abolition) Act, 1970, (hereinafter referred to as the said Act). It appears that the union has already made an application under Section 10 of the said Act which was being treated as Reference No. 3 of 1984 for abolition of contract labour system in certain activities of the petitioner establishment. It also appears that the government has received report of State Advisory Contract Labour Board which contains recommendation made by the State Board in respect of abolition of certain activities in Kandla and Kalol unit of the petitioner establishment. It is not disputed before this Court that such report is submitted by the State Advisory Contract Labour Board to the State

Government as back as 1985 or 1986. The exact date of the report unfortunately is not made available to the court by the counsel appearing for the State of Gujarat. Since no action was taken on the report so submitted and since system of contract labour was not abolished, the respondent union moved this court by way of Spl. C.A. No. 8686 of 1995. On 17th November, 1995 M.R. Calla, J. after hearing the learned advocates appearing for the parties, passed a speaking order which in my opinion is self-sufficient and gives very cogent reasons as to why the directions issued were required to be issued. The appropriate portion of the said order is reproduced hereunder:

" The statement of the learned counsel for the petitioner Mr.Mukul Sinha that Iffco Karmachari Sangh (the cause of which is now espoused by Gujarat Mazdoor Sabha) had moved application under section 10 of the Abolition of Contract Labour Act before the Government of Gujarat, is not disputed by the respondents. It is also not disputed by the respondents that this application moved by Iffco Karmachari Sangh is pending since 1984 by way of Reference No. 3 of 1984 and the Government is not passing appropriate orders on this application moved by the Iffco Karmachari Sangh and as a result the contract labour is still in force in Respondent No.2 company.

Having heard both the sides I am of the considered opinion that the Government is under a statutory duty to decide such application under section 10 and pass appropriate orders thereon. Such matters are of wide importance and undue delay in such matters would adversely affect the very object of the Act. The functionaries of the Government under the Act who are charged with the duties to pass appropriate orders are not expected to sit tight over such matters for long period and they must discharge such duties with utmost promptitude, lest it may create labour unrest and may create labour problems.

In the facts and circumstances of the case, I deem it appropriate to direct Respondent No.1 i.e. State of Gujarat to decide the pending application under section 10 of the Abolition of Contract Labour Act in Reference No.3 of 1984 within a period of four weeks from the date the certified copy of the order is served upon

Respondent No.1. This Special Civil Application is accordingly allowed. Rule is made absolute in the aforesaid terms with no order as to costs.D.S.Permitted."

4. It appears that on receipt of the writ of this Court in the aforesaid matter, the State of Gujarat jumped into action and decided to prove its promptitude in carrying out the direction of the court but not carrying out the statutory obligations. It accordingly within four weeks, as directed by His Lordship Justice M.R. Calla, issued the impugned notification dated 27th December, 1995 whereby in Kalol unit of petitioner in 9 activities or processes or operations, employment of contract labour is prohibited. It is this part of the notification which is under challenge at the instance of the petitioner IFFCO before this Court on number of grounds. The Kandla Unit of IFFCO has not challenged the notification at all and for all practical purposes said notification has become final vis-a-vis Kandla Unit.

5. In the second petition which is filed by the union, the grievance of the union is that in the demand which they have made or reference which they have made being Ref.No. 3 of 1984, they had made specific reference to the activity of or operations of loading and unloading of the urea bags from and to railway wagons and trucks and since the notification has failed to include such activity in the prohibited activities, it is partially aggrieved by the notification in question.

6. Having heard Mr. S.B. Vakil with Mr. M.B. Bhuch for the establishment and Mr. Mukul Sinh for Gujarat Mazdoor Sabha and having considered their submissions at length, on consensus being reached between the parties through their advocares before this Court, following order is passed:

- (i) The Notification dated 27th December, 1995 issued by Government of Gujarat, Labour and Employment Department in excercise of the powers conferred upon it by Section 10(1) in so far it pertains to Kalol Unit of the establishment, is quashed and set aside with direction to the State of Gujarat to consider afresh application moved by Gujarat Mazdoor Sabha in Reference No. 3 of 1984 under Section 10 of the said Act after providing opportunities to the parties to produce whatever written documents or materials they intend to

produce as well as to submit written legal or factual submissions which they intend to submit. There shall be no recording of oral evidence nor shall there be any personal hearing. The State of Gujarat shall after receipt of such material, which is directed to be submitted on or before 12th of August, 1996 by both the parties, shall after considering such material and submissions, take decision legally consistent with the provisions of the Act and the policy underlying the Act. The State shall also consider the rival contention of the respondent Union about the exclusion of one activity namely loading and unloading activity and shall pass appropriate order thereafter. The State is directed to take decision under Section 10(1) of the Act on or before 16th September, 1996 and shall communicate the decision to the concerned parties.

During the period, the State Government carries out the direction issued by this Court, it is directed that the petitioner in Spl. C.A. No. 423 of 1996 shall continue the same labour contractors and shall inform them in writing that they shall not alter to the disadvantage of the labourers, any of their service conditions as obtaining today and the last part of the direction shall operate upto 30th September, 1996."

7. Rule in each petition made absolute to the aforesaid extent only. There shall be no order as to costs.
